

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 622 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ALPESHBHAI VINUBHAI RATHOD DETENU

Versus

DISTRICT MAGISTRATE

Appearance:

MR TH SOMPURA for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order of preventive detention dated 6th December, 1999, made against him by

the District Magistrate, Bhavnagar, under the powers conferred upon him under section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'dangerous person' within the meaning of section 2 (c) of the Act. It is stated that an offence punishable under Chapter-XVI of the IPC is pending against the petitioner and two offences punishable under the Arms Act are registered against the petitioner. Besides, three persons have given statements in respect of the anti social activities of the petitioner, which has adverse effect on the public tranquility and the even tempo of life. The petitioner's activities are, therefore, held to be prejudicial to the maintenance of the public order.

The only ground urged before me is that in all the three offences registered against the petitioner, the petitioner was arrested and was released on bail. The applications for release on bail made by the petitioner and the orders made thereon are vital documents so as to enable the petitioner to make an effective representation against the order of detention. However, in the present case, the petitioner has not been supplied the applications for release on bail made by the petitioner in respect of the offence registered on 13th April, 1999, as CR No. 107/99. Thereby, the petitioner's right to make a representation is infringed and the continued detention of the petitioner is null and void. The contention is not disputed. In the matter of AHAMED KUTTY VS UNION OF INDIA & ANR ({1990} 2, SCC, 1) , the Hon'ble Supreme Court has, in no uncertain terms, held that the bail application and the bail order constitute vital material. Non consideration of by detaining authority or non supply of copies thereof to detenu would be violative of Article 22 (5) and continued detention would be illegal. The said principle shall squarely apply to the facts of the present case. The continued detention of the petitioner is, therefore, unwarranted.

In the result, the petition is allowed. The impugned order dated 24th August, 1999, is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

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JOSHI

